

From: Mark.Hancock@ey.com
To: [*TE/GE-EO-F990-Revision;](#)
Subject: Comments - 2008 Form 990 Draft Instructions.
Date: Saturday, May 31, 2008 2:24:43 PM
Attachments: [EY 990 Instructions Comments 31 May 08.pdf](#)

Ladies and Gentlemen:

We respectfully enclose our comments to the 2008 Form 990 Draft Instructions in the attached PDF file. Please do not hesitate to contact me should you have any issues opening the file. Many thanks.



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31 May 2008

Internal Revenue Service
Draft 2008 Form 990 Instructions
1111 Constitution Avenue, NW
Washington, DC 20224

Comments on Draft Instructions for Core Form 990 and Related Schedules

Ladies and Gentlemen:

Understanding the size, complexity, and time constraints involved in the Internal Revenue Service's ("Service's") preparation of the draft instructions for the Core Form 990 and related schedules, Ernst & Young LLP ("EY") respectfully submits the following comments on the draft instructions. EY, a global organization of member public accounting firms, provides services to various types of exempt organizations that will be impacted by the instructions to which these comments relate. Accordingly, we hope that our comments are helpful and will provide the Service with a perspective that highlights a practical approach to reporting Form 990 filers' operations. In this regard, we have limited our comments only to those instructions that we believe require revision, clarification, or elimination to achieve the stated goals of the Revised Form 990: transparency, compliance, and burden minimization.

CORE FORM 990

Highlights

Part III Statement of Program Service Accomplishments

The Service has solicited comments on whether to rely on existing activity codes or develop new codes. In our opinion, the current activity codes can be confusing, and there are some that are rarely used, while additional ones are needed. Accordingly, we recommend the Service develop new activity codes that more accurately reflect the contemporary environment in which exempt organizations operate. We further suggest making the use of the current activity codes optional until the new codes are published.

Heading

Item H – Group Returns:

Although this instruction adequately sets forth the information that is required to be reported for Item H, further clarification regarding how the “parent” of the group should complete this section would make this instruction more effective. Similarly, how should organizations that are exempt under a group ruling, but file separate returns, complete this section? Are they no longer required to enter their group exemption number? For example, should organizations that are exempt under a group ruling, but file a separate return, answer “No” on Line H(a) but still enter the group exemption numbers on Line H(c)? Lastly the instruction does not indicate where or how a list of affiliated organizations should be attached to an electronically-filed return. We suggest, therefore, that the instruction be revised to explain where the list should be attached and the method of attachment.

Part III – Statement of Program Service Accomplishments

Line 3-Significant Changes

This instruction asks whether the organization ceased conducting or made significant changes in how it conducted any program. However, there is no description of what constitutes a significant change in a program service activity. This instruction should provide examples illustrating significant changes in a program service activity so that organizations may better understand when reporting a change on this line is required.

Line 4-Program Service Description

This instruction requires a description of an intangible output from a program service accomplishment. The only example given for “intangible output” is a research activity. The Service should consider providing additional examples of intangible program service activities so as to make clear the types of information sought.

Part IV- Checklist of Required Schedules

Line 20-Hospitals

According to the instructions for Line 20, organizations that “operated any facility that at any time during the year was, or was required to be, licensed or certified by a state as a hospital” must complete Schedule H. The instructions should clarify “... *in its state*...” vs. “...*by a state*...”, or at least review for consistency. The terms appear to be used interchangeably in the instructions. It

should be noted that this definition will lead to some inconsistency as each state has its own criteria. Consideration should be given to using an analogous provision under Federal law to define a “Hospital.”

Part VI- Governance, Management & Disclosure

Line 2

The definition of a “business relationship” includes business transactions involving transfers of cash or property valued in excess of \$5,000 in the aggregate during the tax year. This threshold is significantly lower than the \$50,000 threshold for a per se “material financial benefit” provided by an organization to its directors. The low threshold for business transactions is likely to result in the disclosure of relationships that have no bearing on the independence or impartiality of the directors involved. Further, the broad definition of the term “business relationship” may serve as a bar to board service for persons employed in certain industries where confidentiality on business transactions is at a premium (physicians needing to protect patient privacy under HIPAA, persons in the securities/banking industry, etc.). For example, under the current rule, the following transactions – none of which would appear to affect the impartiality of the directors involved – would be required to be disclosed:

Director A sells his used automobile to Director B for \$15,000.

Director C, a physician, performs cosmetic surgery on Director D in the ordinary course of Director C’s medical practice.

Director E, an underwriter at an investment bank, is working on the IPO for ABC Company, of which Director F is a key employee.

Accordingly, we suggest the following amendments to the definition of a “business relationship”:

“Business relationship” includes business transactions involving transfers of cash or property valued in excess of \$50,000. “Business relationship” does not include the sale of goods or the performance of services by one person for another in the ordinary course of the first person’s trade or business (medical services performed by a physician, underwriting services of investment banker, etc.) regardless of amount so long as the services are performed on the same basis as for members of the general public or other customers or clients.

Line 4

Although the instructions for this line set forth clear examples of significant changes to the organizing or enabling documents or bylaws, we submit that the following additional example would be helpful: Changes in the public charity status of the organization (e.g., from 170(b)(1)(A)(vi) publicly supported organization to Type I 509(a)(3) supporting organization).

Line 10

The instructions to Line 10 require the organization to state whether a copy of the final Form 990 which was filed with the IRS was also provided to each voting member of the organization's governing body. However, in many cases, a review of the final Form 990 by an organization's entire governing body may not be practical or advisable, such as in the case where the organization has a large, geographically diverse board. Instead, we respectfully submit that the draft instructions should be revised to permit the organization to answer "Yes" if any of the following types of review were conducted:

- Review by all members of a committee of the governing body, such as the audit or finance committee that has knowledge of the organization's structure and operations.
- Review of a final draft Form 990, as proposed to be filed, by the board or a committee thereof, as set forth above.

Lines 13 and 14

While the Service has explained adequately what constitutes a whistleblower policy and appropriately references Sections 1513(e) and 1519 of the Sarbanes-Oxley legislation, we believe that inclusion of these sections or a brief summary of them may help preparers better understand the importance of these policies and the potential penalties to which violators are subject.

Part VII Compensation --

The threshold for highest compensated individuals \$100,000 is lower than the compensation disclosure required of key employees. The threshold for reporting for all individuals should be consistent at \$150,000. Consideration should also be given to indexing the threshold to ensure it is updated on a regular basis

We recommend that the definition of a "key employee" in the glossary to the draft instructions be refined. The definition of a key employee should include only those who manage a discrete segment

or activity of the organization that represents 5% or more of activities, assets, income, or expenses of the organization. We also recommend that the percentage be increased to at least 10%.

Part VIII – Statement of Revenue

Column (A):

The instructions state that “[a]ll organizations must complete Column (A), Total Revenue, reporting their gross receipts for all sources of revenue.” Because certain amounts reported on Column (A) are net amounts, we recommend that this instruction be revised to provide that “[a]ll organizations must complete Column (A), Total Revenue, reporting their gross receipts (unless indicated otherwise) for all sources of revenue.” Additionally, the instructions provide a “TIP” included as the second paragraph of the Part VIII instructions which states: “If the organization enters an amount in column (A) for Lines 2a-2e or Lines 11a – 11c, it must enter a business code for each line from the Codes for Unrelated Business Activity in the 2008 Instructions for Form 990-T.” However, when the Draft Form 990 was released, the Service indicated that the Business Codes would not be required for 2008. Therefore, we propose that until Business Codes are developed to incorporate exempt and excluded activities, the instructions should be modified to state that this column should be left blank. Also, to make clear that the Business Code is not required, this column should be grayed out on the Form until such time that the codes are required. Similarly, there is cautionary language in the instructions for Lines 2 and 11 again stating that a corresponding business code must be entered for each amount entered on the respective line(s). This cautionary language likewise should be amended to clarify that business codes are not currently being required.

Column (C)

To enhance the understanding of Column (C)’s reporting requirements, we propose that the Service make several revisions to Column C. First, the Service should expand guidance concerning the types of revenue to be reported in Column (C). Furthermore, the instructions should be revised to include the following statement: “See the instructions for Form 990-T and Publication 598 for a discussion of what is unrelated business income.” Lastly, to ensure accurate reporting, we recommend that the Service specify that the revenue reported in Column (C) should tie to the amount reported on Form 990-T, Line 13, Column A.

Column (D)

On the 2008 Form 990, column (D) is actually titled “Revenue Excluded from Tax under IRC 512, 513, or 514.” For consistency, we recommend that the header to the instructions for column (D) be revised to match the column header on the Form 990. Also, because the instructions are very brief and the previous version of the 990 used exclusion codes that provided the types of income that were excludable from unrelated business income, the instructions should include examples of revenue excluded under Code sections 512, 513, or 514.

Part X—Balance Sheet

At the outset, on the actual Form 990, Lines 12, 13 and 15 each indicate that the Organization must complete a specified portion of schedule D. Yet, the schedule D instructions state that schedule D, as it concerns these lines, needs only to be completed if the line amounts exceed 5% of total assets. Therefore, we believe that on the balance sheet references should read, “Complete Part __ of schedule D if necessary. See Instructions.” Additionally, for clarification purposes, we recommend that Line 22 read as follows: “Payable to current and former officers, directors, trustees, key employees, highest compensated employees, and other disqualified persons.”

Line 7

The instruction as it currently reads could be confusing in that it appears to provide examples of the receivables amounts sought. We propose that the instructions be revised to provide: “Enter the net amount of all notes receivable and loans receivable not listed on Lines 5 and 6...”

SCHEDULES

Schedule A

Part I

Line 11g

As written, the instructions do not provide any instructions and/or explanations regarding this line. Foreseeably, some supporting organizations may not understand why this question is being asked. Accordingly, at minimum, we recommend that the Service provide general instructions related to this line.

Line 11h, Column (v)

This instruction requires the organization to check “Yes” if it notified the supported organization named in Column (i) of its support. However, it is unclear what type of notification is required. For instance, must the organization provide written notification in order to check this box “Yes”? We recommend that the Service clarify the types of notification required and further recommend that this question be limited to Type III supporting organizations

Schedule D

Initially with regard to Schedule D, we note that the form does not appear to provide additional space to provide information that will exceed the space provided. This fact is of particular significance for Parts VII (Investments-Other Securities), VIII (Investments- Program Related), Part IX (Other Assets) and Part X (Other Liabilities) where the number of entries may far exceed the space allotted. In this regard, we recommend that the Service develop continuation sheets for Schedule D.

Although in most other respects the instructions for Schedule D are accurate, clear and concise, for additional clarification purposes we suggest the following revisions:

Part III, Line 1b

Revise to state: “If an organization has elected to capitalize its collections, then provide on Line 1(b)(i) the reported revenues connected to these collection items if they were also reported on Form 990, part VIII, Line 1...”

Part III, Line 2

Revise to state: “If an organization has received or held collections for financial gain, then provide on Line 2(a) the reported revenues generated by these items. These revenues will have been reported on Form 990, Part VIII...”

Part VI, Column (d)

Revise to state: “Enter the sum of columns a plus b less column c.”

Part VII, Second Paragraph

Revise to state: “List each separate class of publicly-traded stock held by the organization that meets the 5 percent ownership test.”

Part IX, Column (a)

Revise last sentence to state: “The organization may use any reasonable basis to classify these assets.”

Part X, Column (a)

Revise the final sentence as follows: “The organization may use any reasonable basis to classify these liabilities.”

Part X, Column (b)

Clarify the discussion of when the organization is required to provide the text of the FIN 48 footnote to provide that if no amount is reported on the respective line for Federal Income Taxes, the filing organization would neither be required to provide verbatim nor paraphrase the consolidated FIN 48 footnote.

Part IV

We would like to commend the Service’s thoughtful revision of the instruction pertaining to trust, escrow and custodial arrangements and the provision of some very helpful examples. The Service has requested comments regarding whether, and if so the extent to which, a carveout from Part IV reporting is appropriate for certain charitable giving arrangements in which the organization is a trustee, such as charitable remainder trusts. Our view is that there should only be a reporting requirement in a situation where the exempt organization is aware that there is a beneficiary for the lifetime of the trust who is also a disqualified person.

Schedule G:

Overall, the instructions to Schedule G are clear with well-defined terms and helpful specific examples. However, we believe that the following changes will help to ensure transparency while minimizing the burden of complying with the reporting requirements of Schedule G.

Part I, Line 2b, Column V

The instruction requires reporting on Schedule O any amounts paid to professional fundraisers for supplies, printing or mailing costs. We propose that the Service eliminate this requirement as tracking this information separately will be burdensome for organizations and provide minimal value to the reader of the Schedule G. Alternatively, we suggest that this reporting be made optional for 2008, and Schedule G be modified in 2009 to capture this information.

Part I, Line 3

This instruction requests the organization to list all the states in which it is registered, licensed or exempt from registration. However, the form itself does not provide a columnar format in which to disclose this designation that may vary from state to state. Also, organizations may question whether they should disclose the designation by state, and the instructions are currently silent on this point. For instance, if the organization is either licensed or exempt in each of the 50 states (or the state may not have a licensing requirement), would it answer “all states,” or list each state in which it is licensed separately from those in which it is exempt? We suggest that the instructions and/or Schedule be revised to indicate more clearly how an organization is to report information on this line.

Part III:

Because the definition of “Gaming” includes casino nights and Las Vegas nights and the Part II Fundraising events definition also includes casino nights that are not regularly carried on, we suggest that the Part III Gaming definition be clarified to provide when casino nights should be reported as Fundraising Events and when they should be reported as Gaming. Also, to assist organizations in making the appropriate determination, we suggest that the Service provide specific examples. With regard to the instruction for Line 6, it appears as if the instruction related to the volunteer labor percentage is transposed. Perhaps, the instructions should read “The percentage is determined by comparing the number of individuals who **do not** receive direct compensation for their services provided...” (emphasis added). Lastly, if the Service is not requiring an amount to be entered on Line 6(d), we recommend that this box be “grayed out” to reduce potential confusion.

Schedule H

Part I, Charity Care and Other Community Benefits at Cost

Line 7 quantifies the Charity Care and Community Benefits. The denominator for the community benefit expense percentage is the total functional expenses for the organization (excluding bad debt expense). Since joint-venture activities are included in the Line 7 calculations, care will need to be exercised by return preparers to make sure expenses are “grossed up” for the joint-venture activities. If it is intended that joint-venture activity is to be reported, then the activity of any related, controlled exempt organizations should also be reported in the aggregate to accurately present the total community benefit provided.

Schedule I

Part II

Part II of Schedule I requests that the organization report grants paid to governments and organizations in the United States that exceed \$5,000. Among other information regarding the recipients of these grants, the Schedule also requests the EIN (Column (b)) and I.R.C. Code section (Column (c)) applicable to the respective recipient. We suggest removing these columns in order to relieve the substantial burden imposed on organizations to track this information. Organizations often support other community organizations, such as the United Way, without tracking the recipient’s EIN and Determination Letter. Furthermore, we seek clarification regarding Column (f). Although Column (f) provides options for the method of valuation, it is not clear whether there is a preferred or required method of valuation, i.e., is FMV required or is using book value equally acceptable? If the IRS has a preference regarding the valuation methodology, or if all methods are equally acceptable, we propose that the preference, or lack thereof, be set forth in the instructions.

Schedule K

The instructions for Lines 3a and 3b request disclosure of whether the organization has entered into any management/service contract or any research agreements, respectively, which “may result in private business use.” The instructions indicate that such contracts may result in private business use of the property based on all the facts and circumstances (as set forth in TR §1.141-3(b)(4)). In addition, the instructions cite Revenue Procedures 97-13 and 2007-47 for applicable safe harbors under which a management/service contract and research agreement, respectively, will not result in private business use.

It is unclear whether the reporting organization should consider **any** management/service contract or research agreement entered into as one that “may result in private business use,” given the facts and circumstances test set forth in TR 1.141-3(b)(4), or whether the Service is only requesting the disclosure of those agreements that the organization has determined do **not** meet the requirements of the safe harbor provisions set forth in Rev. Procs. 97-13 or 2007-47, as applicable. That is, is it the

Service's intention to respect the reporting organization's determination as to safe-harbor compliance? In addition, it is not clear from the instructions whether Lines 3a and 3b cover **all** management/service contracts and research agreements in effect as of the filing date of the Form 990, or whether the disclosure request is limited to contracts entered into during the reporting year. We recommend that the disclosure be limited to those contracts entered into during the reporting year.

We also propose revisions to the instructions for Line 5 to provide additional examples of the temporary safe harbor limitations. Likewise, we are of the opinion that the instructions should be expanded for Line 6 to provide examples of the various exceptions to arbitrage rebate. Examples of each relevant safe harbor should assist organizations in their ability to correctly respond.

CONCLUSION

We thank the Service for the opportunity to submit our comments and participate in the development of the instructions for the new redesigned Form 990. Please contact Howard Levenson at (202) 327-8811 if you would like to discuss our comments further.

Sincerely,

ERNST & YOUNG LLP

From: [Catherine Oetgen](#)
To: [*TE/GE-EO-F990-Revision;](#)
Subject: Comments Regarding the Proposed Instructions to the Redesigned Form 990
Date: Saturday, May 31, 2008 3:10:43 PM
Attachments: [AFP Comments on the Instructions to New Form 990.pdf](#)

Attached are comments from the Association of Fundraising Professionals (AFP) regarding the proposed instructions to the Form 990. AFP appreciates the opportunity to offer these comments.

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May 31, 2008

VIA E-MAIL

Form990Revision@irs.gov

Ms. Lois G. Lerner
Director of the Exempt Organizations Division of the
Internal Revenue Service

Mr. Ronald J. Schultz
Senior Technical Advisor to the Commissioner of
Tax Exempt and Government Entities Division

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Form 990 Redesign
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Washington, DC 20224

RE: Comments on the Proposed Instructions to the Redesigned Form 990

Dear Ms. Lerner and Mr. Schultz:

The Association of Fundraising Professionals (AFP), on behalf of its members and chapters nationwide, appreciates the opportunity to comment on the proposed instructions to the redesigned IRS Form 990 information returns. AFP believes the Service has done an admirable job in preparing a comprehensive set of instructions that respond to and incorporate public feedback and commends the Service's efforts, particularly in light of the breadth of the recent changes to the Form 990. The comments provided here focus on overall concerns with the proposed instructions, the Core Form 990 and Schedules A, G, J, L and R. They are meant to be constructive and to offer the view of those involved in the operation and management of nonprofit organizations on a daily basis.

BACKGROUND

AFP represents 30,000 members in 197 chapters throughout the world, including 27,000 members and 161 chapters in the United States, working to advance philanthropy

through advocacy, research, education and certification programs. AFP members work for a wide variety of charities, from large, multi-national institutions to small, grassroots organizations, engaged in countless missions and causes including education, healthcare, research, the environment and social services, to name a few. In 1960, four forward-thinking and prominent fundraisers met with the goal of creating an association, now AFP, that would promote good stewardship, donor trust, and ethical and effective fundraising.

AFP members are required annually to sign our *Code of Ethical Principles and Standards of Professional Practice*, which were first developed in 1964. To complement the oversight of the Service, the code specifically states that our members must comply with all applicable local, state, provincial and federal civil and criminal laws. A copy of the code is attached. AFP also instituted a credentialing process in 1981 – the CFRE, or Certified Fund Raising Executive designation—to aid in identifying for the giving public fundraisers who possess the demonstrated knowledge and skills necessary to perform their duties in an effective, conscientious, ethical, and professional manner. This was followed in 1990 by the ACFRE for advanced fundraisers. We also have a strong ethics enforcement policy that can result in the revocation of credentials and expulsion of members who engage in prohibited behavior.

This background is cited to emphasize the importance that AFP and its members place on ethical fundraising. Much of our work is spent educating and training our members and the public in ethical fundraising practices while working with federal and state regulators to improve regulation and to identify wrongdoers who do not belong in the charitable sector.

In addition, since its founding, AFP has championed donor rights. AFP was the driving force behind the creation of the *Donor Bill of Rights* and provides information to potential donors about how to select, evaluate, and give wisely to charities. A copy of this document is attached. AFP encourages all donors and nonprofit volunteers to investigate and become engaged with charities of their choice before making financial commitments.

GENERAL COMMENTS

AFP has identified a handful of general concerns that pervade the instructions as a whole. These concerns relate to the highlights sections, the glossary and defined terms throughout the instructions, the format of the instructions, and Schedule O.

It is unclear whether the highlights sections at the beginning of each set of instructions are a new permanent feature of the instructions or rather if they are a temporary resource made available during the public comment period only. If the highlights are intended to be permanent, AFP recommends removing them entirely because they add length to the instructions, but do not add information.

To save space and eliminate unnecessary repetition, the Service should delete all definitions included in the body of the instructions of terms that are defined in the glossary. Instead, the instructions should simply refer filers to see the glossary for such

definitions. In addition, AFP suggests that throughout the instructions, defined terms found in the glossary should be differentiated in some way to indicate that they are defined terms, *AFP recommends using both bold and italics to highlight the terms*. The Service should also add reminders throughout the instructions indicating that definitions of terms distinguished in such a way can be found in the glossary.

AFP is also concerned that although the proposed instructions offer comprehensive directions on completing the revised Form 990, the material is voluminous and cumbersome. Filers would benefit greatly by having easy access to a downloadable file that contains all the various pieces of the Form 990 (i.e., Forms, Schedules instructions, glossary, etc.) and can be completed and saved electronically. Finally, for many organizations, Schedule O will be extremely voluminous, and as such, AFP is concerned that the Form will be less useful for the public.

SPECIFIC COMMENTS

In addition to these general comments, below is a list of our specific comments, both positive and critical, set out by section, part, line number and page number of the corresponding instructions where possible.

I. Specific Comments on the Core Form—Highlights and General Instructions

A. Highlights and General Instructions, Part A, Page 7 (Gross Receipts):

Part A of the General Instructions addresses who must file the Form 990. The term “gross receipts” is defined here but there is no reference to the glossary definition or Appendices B & C, which address the term in detail. The discussion of “gross receipts” in this part should refer to the glossary and Appendices B & C. Likewise, a reference to the glossary and Appendices B & C should be made throughout the instructions whenever the term is used.

B. Highlights and General Instructions, Part A, Page 7 (Transitional Period Filing Chart):

AFP commends the Service for including a helpful resource in the chart that sets forth the thresholds for filing the Form 990-EZ during the transition period for the redesigned Form 990. See comment below in paragraph I, E for further suggestions on the sequencing chart.

C. Highlights and General Instructions, Part A, Page 8 (Reference to Sequencing List):

It would be helpful and user-friendly if the Service includes a note at the end of Part A that refers to Part C of the General Instructions where the sequencing list to complete the Form 990 can be found.

D. Highlights and General Instructions, Part B, Page 9 (Organizations Not Required to File):

Part B of the General Instructions outlines which organizations are not required to file the Form 990. For number 12 under the heading “Certain organizations that file different kinds of annual information returns,” AFP suggests that this provision could be made clearer by stating that a Form 990-PF should be used for private foundations as well as private operating foundations.

- E. Highlights and General Instructions, Part C, Page 10 (Sequencing List):** Part C of the General Instructions includes a sequencing list to complete the Form and Schedules. In general, given the extensive changes to the Form 990, this will prove to be a helpful tool for filers. However, AFP strongly recommends that the sequencing chart should instruct filers to perform the calculation in Schedule A to determine whether they are eligible to file the Form 990 or 990-EZ rather than the Form 990-PF for organizations filing in their sixth or later year of existence. Considerable time could be wasted preparing unnecessary forms if the organization does not meet one of the public support tests.
- F. Highlights and General Instructions, Part H, Page 14 (Filing Penalties):** Part H of the General Instructions provides information on penalties against the organizations and responsible persons for failure to file the Form 990. In the provision related to penalties “against responsible persons,” AFP recommends adding a description of how the Service determines the identity of a responsible person (or persons). Does this suggest that such penalties can be charged against more than one person found responsible for failure to comply with the filing requirements? The instruction creates confusion as to whom this provision applies, particularly in the common situation where organizations have both a comptroller and CFO.
- G. Highlights and General Instructions, Part I, Page 14 (Group Return):** Part I of the General Instructions provides information on group returns. The instructions state that in cases of group returns, every year each subordinate organization must authorize the central organization “in writing” to be included in the group return. AFP believes this requirement is superfluous and unnecessary and recommends removing this requirement entirely.
- H. Highlights and General Instructions, Part J, Page 15 (Public Inspection):** Part J of the General Instructions provides requirements for a properly completed Form 990. The instructions include a provision related to “public inspection” of the Form 990. The instructions should be revised to make it clear that the special rules for Schedule B of the Form 990 (Schedule of Contributors) provide that it is not a public document and is not required to be made publically available. This is an important point. Organizations often make Schedule B publicly available although they are not required to do so and it is not in their best interests to do so. The Service should make every effort to avoid organizations inadvertently allowing public inspection of Schedule B.
- I. Highlights and General Instructions, Part J, Page 15 (Completing All Lines):** Part J of the General Instructions explains the requirements for a properly completed Form 990. The instructions state that filing organizations must “not attach any materials not authorized in the instructions” to the Form 990. This provision is ambiguous at best and AFP requests that it be deleted. Schedule O allows for additional explanation of items listed in the other parts of the Form 990. It is conceivable that, at times, additional explanations of the

organization's responses may be best served by attaching additional information not expressly authorized in the instructions. Since the Form 990, especially in its redesigned state, is intended to be a public information document, organizations should not be dissuaded from providing information to the public that they believe is relevant to their responses to questions on the Form 990.

II. Specific Comments on the Core Form—Heading, Part I (Summary) and Part II (Signature Block)

- A. Heading, Item A, Page 1 (Accounting Period):** This provision relates to the organization's accounting period. AFP suggests adding a sentence at the end of the provision directing filers to "See General Instructions Part D for additional instructions about accounting periods and methods, including short years."
- B. Heading, Item B, Page 1 (Checkboxes):** This provision instructs filers on filling out the appropriate checkboxes in the Heading. The section labeled "Amended Return" instructs the filer to check this box if the organization previously filed a return with the Service for the same tax year and includes a "Note" stating that a state may require an organization to file an amended return to satisfy individual state reporting requirements. This note should be clarified to explain whether it is necessary for an organization to file an amended return with the Service if its Form 990 is amended because of a particular state's requirements. To that end, AFP believes that a charitable organization should be able to amend its Form 990 to satisfy state filing requirements without having to file an amended return with the Service. States may interpret their reporting requirements differently than required by the instructions. It is even possible that amending the Form 990 filed with the Service as a result of a state requirement could violate the requirements of another state, the proverbial Catch-22. There is no uniformity in state filing requirements and the Service should not require organizations to unnecessarily amend their returns based on potential conflicting state reporting requirements.
- C. Heading, Item C, Page 1 (Doing Business As):** Item C in the Form 990 Heading requires the organization to enter its legal name and alternative name if it operates under a different name. The "Doing Business As" box provided on the Form 990 does not provide much space for organizations to enter an alternative name or names. The instructions should provide that organizations operating under more than one alternative name should list such name or names in Schedule O.
- D. Heading, Item G, Page 2 (Gross Receipts):** Item G in the Form 990 Heading requires the organization to enter its total gross receipts in the space provided. The instructions for this provision would be improved by adding a reference to the definition of the term "gross receipts" in the glossary and the additional information on gross receipts found in Appendices B & C.

- E. Part I, Tip, Page 3 (Sequencing List):** Part I of the Form 990 is a summary of information about the organization. AFP notes that the instructions to Part I begin with a very helpful tip that organizations should complete this section last and should refer to the sequencing list to complete the Form 990 found in Part C of the General Instructions. Note: See comment above in paragraph I, E concerning the public support test.
- F. Part I, Line 1, Page 3 (Mission or Significant Activity):** This line requires organizations to state their mission or significant activity. AFP suggests including the term “mission” in the glossary and simply directing filers to refer to the glossary rather than the instructions for Part III for an explanation of the term. AFP also notes that asking organizations to state its mission or significant activity is beneficial for organizations because this broadens the scope of information that is reportable and made available for the public.
- G. Part I, Line 2, Page 4 (Major Dispositions):** This line requires organizations to check the box if the organization discontinued operations or disposed of more than 25% of its assets. The instructions here (and for Part IV, Line 32) should clarify that this question requires the box to be checked only in instances of unusual transfer of significant assets. Most public charities dispose of more than 25% of their assets annually in the normal course of operation. Moreover, most state laws relating to the disposition of a significant amount of assets only require attorney general notification if all or substantially all of the organization’s assets are being transferred. The Service is therefore imposing a significantly greater reporting burden on charities than would otherwise be required by states. If this disclosure (and Schedule N) is intended to apply only to single large transactions that dispose of more than 25% of the organization’s assets, it is not clear from the Form or instructions and should be clarified.
- H. Part I, Line 6, Page 4 (Volunteers):** This line requires organizations to report the number of volunteers who provided volunteer services to the organization during the tax year. The instructions and glossary definition of the term “volunteer” are unclear as to whether participants in an organization’s special event, such as a walk-a-thon and the like, constitute volunteers and should be included in the reported number. Does the Service consider participants in such special events to be volunteer fundraisers and, therefore, applicable to the number reported here?
- I. Part I, Line 16, Page 4 (Professional fundraising expenses):** This line requires organizations to report professional fundraising expenses. Although AFP prefers the current Form 990 that requires organizations to report “fundraising expenses,” as opposed to “professional fundraising expenses,” AFP is grateful that the Service included a glossary definition of “professional fundraising services” as previously suggested by AFP and other members of the fundraising community.
- J. Part II, Page 4 (Signature Block):** This part includes instructions for completing the signature block. The instructions should clarify that employees

are not considered paid preparers by adding a statement at the end of the first paragraph in this section as follows: “An employee of the organization who prepares the return is not considered to be a paid preparer.”

III. Specific Comments on the Core Form—Part III (Program Service Accomplishments)

- A. Part III, General Comment (Program Service Accomplishments):** The prominent placement of this Part of the Form 990 as a whole is much improved from the originally proposed Form 990 where it was located at the end of the Form. AFP believes that including program service accomplishments toward the front of the return will benefit the public and organizations by making highlights of service accomplishments easily accessible and obvious at the beginning of the Form.
- B. Part III, Line 1, Page 1 (Mission):** This line asks organizations to briefly describe their mission. The instructions tell filers to leave this section blank if the organization does not have a mission. All organizations have some type of mission and nonprofits should not be encouraged to leave out a description of their mission in this important public information return. Accordingly, AFP suggests removing this sentence and adding a line that states: “If the organization does not have a formal mission statement, the purposes set forth in its organizing documents (regardless of how general) should be included here.”
- C. Part III, Line 2, Page 1 (New Program Services):** This line asks organizations about new significant program services undertaken in the tax year. The instructions should clarify that if the organization undertook significant program services for the tax year that would also be reported as one of the three largest program services in response to Line 4 of Part III, then filers should name the new program service in Schedule O and state: “See Part III, Line 4 for a detailed explanation.” This will prevent the same program services from being reported in detail twice.
- D. Part III, Lines 4a-4e, Page 2 (Program Service Accomplishments):** These lines require organizations to describe the achievements for each of their three largest program services as measured by total expenses incurred. In particular, the instructions related to “Donated Services” state that the amount of any donated services or use of materials, equipment, or facilities in connection with a specific program service must not be included in revenue, expenses, or grants reported in lines 4a-4e. This poses a problem with regard to gifts in kind that are used to facilitate an organization’s program services. AFP believes that gifts in kind used to facilitate program services should be reflected in the expenses, grants and revenues reported in this section. Many organizations receive gifts in kind which are used directly in the provision of core program services. It would be difficult for filers to separate out gifts in kind because under Generally Accepted Accounting Principles (GAAP) the value of gifts in kind is reported as revenue and program expenditures;

therefore, gifts in kind would be reflected that way in any audit the organization would perform. AFP does not believe the Service intends to exclude gifts in kind in the description of program services but the instructions are unclear on this very significant point. The instructions should be revised to make clear that gifts in kind may be reported as revenue, expense and grants on lines 4a-e.

IV. Specific Comments on the Core Form—Part IV (Required Schedules)

- A. Part IV, Line 10, Page 3 (Endowments):** This line requires organizations to indicate whether they held assets in temporary, permanent or quasi-endowments. The instructions and the glossary definition of “quasi-endowment” can be improved by referring to board designated funds as examples of quasi-endowments.
- B. Part IV, Line 12, Page 3 (Audited Financial Statements):** This line requires an organization to indicate whether it received an audited financial statement for the tax year. AFP suggests clarifying in the instructions that a financial review or compilation by an accountant is not considered an audited financial statement.
- C. Part IV, Lines 17-19, Page 3 (Professional Fundraising or Gaming):** These lines consist of questions to determine if an organization has to fill out Schedule G (Supplemental Information Regarding Fundraising or Gaming Activities). In particular, the instructions suggest that an organization should consider filling out Schedule G for state reporting purposes if necessary. AFP suggests adding a sentence instructing filers to consult relevant state law. Furthermore, as noted in greater detail in our comments regarding Schedule G below, AFP understands that feedback regarding the redesigned Form 990 is no longer under consideration by the Service, but AFP reiterates the point made in its previously submitted comments in September 2007 on the redesigned Form 990 urging the Service to separate gaming from fundraising via separate schedules.
- D. Part IV, Lines 29-30, Page 5 (Non-cash and Other Contributions):** Line 29, relating to disclosure of non-cash contributions, and Line 30, relating to contributions of art, historical treasures and similar assets, and conservation easements, both state that an organization should not include “contributions to the capital of the organization.” It is unclear what the Service means by a contribution of capital to the organization. A definition of “capital” should appear in the glossary as the definition may not be obvious to many filers.
- E. Part IV, Lines 31-32, Page 5 (Major Dispositions):** These lines require disclosures regarding major dispositions of assets, among other things. See comments to Part I, Line 2 above in paragraph II, G.
- F. Part IV, Line 37, Page 6 (Substantial Activities):** This line requires organizations to report on an organization’s conduct of substantial activities through an unrelated partnership. The instructions are particularly confusing

in this complicated area of intertwining organizations. Examples would be helpful.

V. Specific Comments on the Core Form—Part V (Other IRS Filings and Tax Compliance)

A. Part V, Line 9a, Page 4 (Taxable Distributions): Line 9a relates to whether the organization made any taxable distributions under Section 4966. The Service should be aware that the instructions on page 4 instruct filers to see the glossary for a definition of “taxable distribution” but the glossary does not include the definition.

VI. Specific Comments on the Core Form—Part VI (Governance)

A. Part VI, Section A, Line 1b, Page 1 (Independent Voting Members)

- i. Eliminate Reference to Schedule L:** This line requires organizations to enter the number of voting board members who are independent. AFP requests that the Service eliminate references to Schedule L (concerning transactions with interested persons) here because it is extremely difficult to flip back and forth and follow the instructions of both Part VI and Schedule L simultaneously. In this instance, all related and pertinent information required for instructing filers on how to determine independent voting members should be included in this section. An effort should be made to make the instructions relating to independent voting members comprehensive and easy to follow for this important question.
- ii. Eliminate First Prong of Independence Test:** In addition, the instructions here list four circumstances to apply in determining whether a governing board member is independent. The first circumstance requires that the governing board member was not compensated as an officer or other employee of the organization. Many organizations have the Chief Executive Officer (CEO) of the organization as a member of the governing board. Simply because this person is compensated does not mean the CEO should be disqualified as an independent voting member. Nothing about a CEO’s position as an employee would impugn his or her independence other than votes concerning his or her own compensation. Furthermore, it is difficult to imagine any other scenario where the chief executive or any other staff member of the organization would have his or her independence compromised because they serve on the organization’s board. Therefore, AFP suggests removing this circumstance.
- iii. Define Indirect Material Benefit:** In the third circumstance listed, the Service requires that governing board members are only considered independent if the member did not otherwise receive, directly or indirectly, material financial benefits from the organization. The Service should provide a comprehensive definition of “indirect material financial benefit” and also include examples of both direct

and indirect material financial benefits. Again, this is a significant and important section of the return, and filers would benefit from clear and concise instructions to provide accurate responses.

- iv. **Eliminate Loan Exception:** AFP is surprised that an exception is being made from the concept of “material financial benefits to members” for loans to the organization that are made at arms length or more favorable terms. This position is not consistent with other transactions made in a similar manner but that are not excepted (including straightforward retail sales to the organization at cost). Consistency in reporting is required here and the best way to maintain such consistency is to remove the exception for loans in excess of the per se material financial benefit threshold of \$50,000.

B. Part VI, Section A, Line 2, Pages 2-3 (Relationships Among Officers, etc.)

- i. **Define listed persons:** Line 2 asks organizations to identify family and business relationships among officers, directors, key employees, etc. The instructions ask the organization to indicate if any “listed persons” had such relationships with other listed persons. It is unclear who a “listed person” is. Assuming the Service is referring to those persons listed in the question, it should clarify the instructions accordingly. Furthermore, examples of relationships would be helpful here.
- ii. **Clarify the Definition of “Family Relationship”:** The instructions and glossary offer a definition of “family relationship” that includes ancestors. The instructions and glossary should be clarified to indicate whether the definition includes only lineal ancestors or other relatives such as aunts, uncles, etc. It may be easier to simply list all the relatives that are implicated under the definition to promote consistent reporting and lessen the extent to which filers interpret this definition differently.
- iii. **Raise the \$5,000 Threshold:** The second example in the definition of business relationship involves transactions involving transfers in excess of \$5,000 in the aggregate during the tax year. This \$5,000 threshold is far too low and would make it exceedingly difficult for filers, or, in some cases, the individuals involved in such transactions to track this information accurately. AFP suggests a transaction minimum of \$50,000. Also, the instructions should clarify that only reasonable relationships must be ascertained. AFP suggests that an annual board disclosure be deemed reasonable.
- iv. **Exempt Reporting of Confidential Relationships and Transactions in the Ordinary Course of Business:** Personal and confidential relationships, especially those involving attorneys, therapists or members of the clergy, should be exempt from the disclosure requirements of Line 2. In addition, an exception for transactions that

are in the ordinary course of business should be made under the definition of “business relationship.”

- v. **Add Examples of Business Relationships:** The Service should add examples of business relationships to assist filers in accurately responding here.

- C. **Part VI, Section A, Line 4, Pages 3-4 (Changes to Organizational Documents):** This line requires organizations to report and describe changes to organizational documents. The list of examples of significant changes to the organizing documents or bylaws is confusing and conflicts with the instructions. Filers are instructed to report changes in organizing documents and bylaws and the instructions explicitly state that organizations must not report changes to policies that do not entail changes to organizing documents or bylaws. However, the list of examples suggests that the organization must report on changes to its conflicts of interest, whistleblower and document retention policies and audit committee charters, among others. These policies are not considered organizing documents or bylaws and it is overly burdensome to suggest that organizations are required to report changes to such policies. Furthermore, the Service instructs filers to describe significant changes in Schedule O but does not allow filers to attach copies of amended documents. To promote clarity and consistency with the information provided in the returns, AFP suggests the Service allow organizations to attach amended documents for all amendments to its organizing documents (not just name changes), rather than requiring organizations to undertake the highly burdensome task of describing such amendments in Schedule O.
- D. **Part VI, Section A, Line 6, Page 4 (Members or Stockholders):** Line 6 asks organizations to disclose whether they have members or stockholders and the instructions list applicable members’ rights. The last line of the instructions should be modified to state the following: “Describe in Schedule O the classes of members or stockholders *with the rights described above.*”
- E. **Part VI, Section A, Line 7a-7b, Page 5 (Governing Body Election):** These questions relate to whether the organization has members with the power to elect the governing body or approve its decisions. The corresponding instructions require organizations to include additional information in Schedule O relating to the class or classes of such members, the nature of the rights, etc. It is unclear why this information is necessary. AFP recommends deleting the instructions requiring additional information; however, if the Service decides it is necessary, rather than burdening the organization with excerpting various bylaw sections relating to members’ voting rights (many of which may be lengthy), why not require organizations to attach the bylaws or simply cite the relevant bylaw section numbers?
- F. **Part VI, Section A, Line 9a, Page 5 (Local Chapters, Branches or Affiliates):** The instructions require an organization to disclose information related to policies and procedures governing an organization’s local chapters,

branches, etc. The Service should be clearer as to the meaning of legal authority to exercise supervision and control.

G. Part VI, Section A, Line 10, Page 6 (Form 990 Review by Governing Body): The instructions require an organization to explain the process by which the governing body reviewed the Form 990 prior to its filing. AFP has many concerns with this requirement because the instructions are internally inconsistent and present a situation which may, in certain cases, make it impossible for the organization to state “Yes” in response to this question.

- i. The instructions require that to state “Yes” the Form 990 must be reviewed by each voting member of the organization’s governing body. What happens if a single member of a large governing body is unavailable due to military service, health issues, etc.? The Form 990 is often completed just before the filing deadline. This requirement will inevitably lead to a delay in the filing of the return, a potentially unintended consequence.
- ii. The instructions require that the organization describe the process used to review the Form 990 “before or after it was filed with the IRS” in Schedule O. How could an organization possibly describe a process used to review a form, if the form was filed prior to the review?
- iii. The instructions state that the organization must describe the process it used if any to review the Form 990; however, the instructions also seem to assume that the process by which the organization reviewed the Form 990 is by providing a copy to the governing board members for review. It is unclear what additional review process the Service is trying to elicit.
- iv. The instructions require organizations to describe extraordinarily detailed specifics regarding such review, including “the extent of such review.” This instruction in particular is troublesome not only because such specifics are extremely burdensome to gather from each and every governing board member who undertakes the review, but also because it is not clear exactly what information would satisfy this requirement.
- v. Finally, there is no legal requirement that an organization’s governing body review the Form 990 before it is filed. Particularly for organizations with large boards, review by a committee of the governing body may not only be the best option, but the only option.

H. Part VI, Section B, General Comment, Pages 6-9 (Policies): Although AFP strongly supports widely held notions of best practices, and, in fact, has established its own enforced Code of Ethics for its own membership, it does not believe the Form 990 is the appropriate place to instruct charities on them. Furthermore, it appears that the Service does not have the statutory authority to ask for governance-related information or to recommend governance practices. As for Section B of Part VI of the Core Form, this section asks

questions about policies that suggest all charities should have certain policies in place. However, small organizations may feel compelled to use their scarce resources to prepare policies and establish committees that are inappropriate or unnecessary for an organization of its size. Accordingly, AFP believes that this section should be *optional*. As stated here, small organizations may find many of the policies and practices referred to in the Form 990 and instructions overly burdensome and organizations should not be compelled to answer one way or the other. Making this section optional would allow organizations to decide for themselves whether it is important to show the public that they comply with uncoded notions of best practices.

- I. Part VI, Section B, Line 12a-12c, Pages 6-7 (Conflict of Interest Policy):** This line refers to conflict of interest policies. The instructions should be clarified to indicate that an organization should answer “Yes” if a conflict policy was adopted before the end of the tax year. Furthermore, under Line 12b relating to annual disclosure of conflicts of interest, the instructions should provide that if an organization answers “No” to the question of whether it requires an annual disclosure, it may provide a description of its disclosure process in Schedule O. This is also an extremely burdensome set of questions because many conflict policies are extremely detailed and quite voluminous. A description of the organization’s practices for monitoring conflicts could go on for many pages. Again, why not simply request that the policy be attached?
- J. Part VI, Section B, Lines 13-14, Page 7 (Whistleblower and Document Retention Policies):** This question relates to whistleblower and document retention policies. AFP strongly suggests that the Service issue samples of minimally acceptable whistleblower and document retention policies. Additionally, the “Tip” referencing Sarbanes-Oxley legislation should make clear that Sarbanes-Oxley only applies in small part to nonprofit organizations.
- K. Part VI, Section B, Line 15a-15b, Page 7 (Determination of Compensation):** Lines 15a and 15b are related to the organization’s process for determining compensation of certain individuals. AFP is concerned by the overly leading nature of these questions and believes if an organization does not respond affirmatively to either of these sub-parts, it could jeopardize the organization’s reputation with the public. First, the instructions provide that if filers answer “Yes” to either question, additional descriptions should be provided in Schedule O. In the likely event that some organizations will answer “No” to one or both sub-questions, AFP suggests the instructions provide that if an organization answers “No” to any part of Line 15, filers should describe in Schedule O the process by which such compensation decisions were made. Second, the instructions provide a three part process for determining compensation of top management; the second prong relates to using comparability compensation data. AFP strongly recommends that the Service set a compensation threshold of \$100,000 or above for the use of comparability data, and only require organizations to use comparable

compensation data for compensation above this threshold. Third, if at all possible, the Service should insert a question on the Form itself to first ask if the organization has employees compensated over \$100,000. Only if the answer is “Yes,” should the organization be instructed to answer the remaining parts of the question.

L. Part VI, Section B, Line 16b, Pages 7-8 (Joint Venture Policy): Line 16b requests an organization to disclose information as to whether it has a written policy related to joint ventures. AFP suggests that the Service revise the instructions to state that if the organization answers “No,” the organization may explain how it evaluated any such joint ventures to ensure compliance with federal law and to protect its exempt status in Schedule O.

M. Part VI, Section C, Line 18, Page 8 (Public Availability of Forms 1023, 990, etc.): Line 18 relates to public availability of an organization’s application for tax exemption. The instructions should instruct filers to refer to Appendix D for more information on public inspection availability, particularly the section on “Internet Posting,” which specifically describes the rules allowing organizations to make documents available by posting on another’s website.

N. Part VI, Section C, Line 19, Page 9 (Public Availability of Other Documents): Line 19 requires organizations to explain in Schedule O whether the organization makes other documents (such as governing documents and financial statements) available to the public. Conflict of interest policies are not required by law and, therefore, not required to be attached to the 1023 unless a conflict policy is in place. The instructions should be corrected to state that the organization’s conflicts of interest policy and financial statements are not required to be made publicly available.

VII. Specific Comments on the Core Form—Part VII (Compensation)

A. Part VII, General Comment (Compensation): Part VII and Schedule J would require reporting compensation information related to former officers, directors, trustees, key employees or highest compensated employees for the prior five years. This is a lengthy period and may be burdensome for organizations. AFP suggests a shorter period of three years to remain consistent with the number of years the Form 990 is to be kept.

B. Part VII, Overview, Page 2 (Officer): The definition of “officer” in the glossary and as applied in Part VII is unclear. There are officers of the board (i.e., president, vice-president, treasurer or secretary) and staff officers (i.e., chief executive officer, chief financial officer, chief operating officer, etc.). As it stands, the definition implies that an officer of the board manages the daily operations of the organization when in practice staff officers usually handle such duties. AFP recommends that the definition be revised to change the first sentence as follows: “An officer is a person elected or appointed by the board, such as a president, vice-president, secretary, or treasurer.” Unfortunately there is no consistency in officer titles amongst various organizations.

Consequently, it is important that the glossary and instructions be explicit that the term “officer” refers to officers of the board and the organization’s top management official only.

- C. Part VII, Overview, Page 2 (Key Employee):** AFP is concerned that the wide breadth of the definition of “key employee” will be burdensome for many (especially large) organizations. AFP recommends that the definition be revised to limit the number of key employees reported. Furthermore, the control of 5% of expenditures or assets threshold is both ambiguous in how it is determined and too low to be meaningful. AFP, therefore, recommends that it be raised and clarified with examples.
- D. Part VII, Section A, Column C, Page 5 (Position):** This question asks filers to check the box to identify whether a listed person is a former officer, director, trustee, etc. The corresponding instructions are confusing and ambiguous with regard to the requirements of which persons to report here. The term “former officer, director, trustee, etc.” should be included in the glossary. Furthermore, the instructions would benefit from a basic statement saying that the organization must report compensation of former officers, directors, etc. only if the individual is still employed by the organization in a lesser capacity or by a related organization in any capacity.
- E. Part VII, Section B, Page 14 (Independent Contractors):** This question relates to information about the five highest compensated independent contractors. A significant problem with completing the Form 990 has always been the description of services for independent contractors now included in Part VII, Section B, Line 1, Column (B). The instructions should include a statement that filers ensure that any independent contractor described as providing fundraising services also report such compensation on Part I, Line 16(a) and Part IX, Line 11(e), as well as completing Schedule G.

VIII. Specific Comments on the Core Form—Part VIII (Revenue)

- A. Part VIII, Line 1b, Page 2 (Membership Dues):** This line requires filers to list revenue from membership dues. The instructions would benefit from more examples. Also, the regulations regarding de minimus gifts in exchange for contributions or membership dues should be referenced here.
- B. Part VIII, Line 8a-8c, Pages 8-9 (Fundraising Events):** These lines require information about gross income from fundraising events. The deduction for direct expenses under Line 8b has been one of the most confounding and confusing parts of the Form 990 to complete accurately. AFP strongly encourages the Service to add directions and examples to distinguish between direct expenses reported on Line 8b as compared to Part IX, Column D. For instance, the cost of renting a facility, providing security, and staffing a dinner/dance would appear to be a direct expense. But what about the cost of an auctioneer, printing of invitations or postage? Where would the costs paid for production management of a large special event that may also include certain marketing responsibilities fall? Clearly more guidance on the booking

of direct expenses as opposed to fundraising expenses is required. This has been a major issue for a number of state regulators. Organizations prefer to book expenses under Line 8b because they do not then appear as fundraising expenses in Part IX, Column D, and all organizations are under pressure to reduce reported fundraising expenses.

IX. Specific Comments on the Core Form—Part IX (Functional Expenses)

- A. Part IX, Line 11e, Page 17 (Professional Fundraising Fees):** This line relates to professional fundraising fees. The exclusions listed in the instructions are not exhaustive. Under state law, professional fundraising fees also do not include copywriters, list managers, public relations consultants, caging operators, software providers, or financial service advisors, among others. It is important that the definitions included in state solicitation regulations are consistent with what is reported on Line 11e as this information will be reviewed by state regulators. Therefore, AFP strongly recommends that the list of excluded vendors be significantly expanded.
- B. Part IX, Line 26, Page 20-21 (Joint Costs):** This line relates to joint costs. The instructions are ambiguous; it is unclear what is meant by “furnish the relevant financial data in the spaces provided.” Does this mean that the organization should remove allocated expenses in Lines 1-25 and report them in Line 26, Columns A-D? The instructions are not clear on this point. In addition, the instruction that “expenses attributable to providing information regarding the organization itself, its use of past contributions, or its planned use of contributions received are fundraising expenses and must be reported in Column (D),” is too general, and does not reflect the guidance provided in AICPA SOP 98-2. Furthermore, the last sentence in the instructions state “See Glossary” but there is no corresponding defined term found there.

X. Specific Comments on the Core Form—Part X (Balance Sheet): No comment.

XI. Specific Comments on Schedule A: Public Charity Status and Public Support

- A. Highlights, Page 2 (Form 8734 Replacement):** The highlights section to the instructions for Schedule A discuss the planned new rules that will replace the Form 8734 by having organizations establish in Schedule A that it is not a private foundation at the end of its first five tax years rather than filing a separate Form 8734. AFP is in favor of this new rule, specifically because it lessens the compliance burdens of tax exempt organizations by reducing the number of forms required to be filed.
- B. Part I, Line 11, Page 9 (Supporting Organization):** This line requires the organization to identify whether it is a supporting organization and, if so, to specify the type. The Pension Protection Act amended this area of law and organizations are waiting for clear guidance from the Service on how to determine certain supporting organization types. It would greatly benefit filers if this section of the instructions directed filers to additional resources to help determine which type to choose if the Service has not already identified them as such in a letter.

C. Part II, Line 1, Page 11 (Gifts, Grants, and Membership Fees Received):

This line requires an organization to report the amounts of gifts, grants, contributions and membership fees received. The Service should make clear whether or not gifts in kind should be reported as a gift, grant or contribution. The instructions are silent on this topic. Additionally, the issue of what constitutes membership fees and what should be excluded from the calculation comes up throughout various parts of the instructions. AFP suggests defining the term “membership fees” and including it in the glossary. The definition should include exhaustive examples of what should and should not be included in the amount, along with references to other resources and regulations that will provide guidance to filers.

D. Part II, Line 5, Page 13 (Amounts Exceeding 2%): The instructions provide an example for filers of a way to track and compute the portion of total contributions that exceed 2% of the organization’s total support. AFP commends the Service for providing this helpful example. The example should clarify that the chart is a suggested method for calculating the information set out below. Also, a tip should be added here that informs the filer how to find out if a contributor is a publicly supported organization that should not be included in the calculation, such as by checking Publication 78.

E. Part IV, Page 23 (Supplemental Information): Filers are instructed to use Part IV to provide narrative information as applicable. The instructions should specify to use Schedule O if more space is required. Additionally, the instructions on Part IV of Schedule A itself should be revised accordingly, because the supplemental information is required for questions other than only Part II, Line 17a or 17b.

XII. Specific Comments on Schedule G: Supplemental Information Regarding Fundraising or Gaming Activities

A. General Comment (Schedule G Revisions): AFP has provided its comments and suggestions for revising the instructions for Schedule G in a joint letter, submitted under separate cover. The comments provided herein are in addition to those in the joint letter. Although comments regarding the redesigned Form 990 are no longer under consideration by the Service, AFP reiterates the point made in its previously submitted comments in September 2007 on the redesigned Form 990 regarding differentiating reports on gaming from fundraising. The fundraising community unanimously views fundraising and gaming as distinct, unrelated and separate activities and, therefore, believes that the detailed information about gaming activities should be reported on a separate schedule. AFP appreciates that the definition of “fundraising activity” expressly states that “[f]undraising activities do not include gaming (other than gaming that is incidental to fundraising activity)”; however, to further emphasize the distinction between gaming and fundraising, AFP urges the Service to consider separating sections on fundraising and gaming throughout the Form 990, Schedules and instructions.

- B. Part I, Line 2b, Col. (iii), Page 3 (Custody or Control):** Filers must respond as to whether fundraisers had custody or control of contributions and to describe the arrangement in Schedule O. It would be helpful if a clear definition of the terms “custody” and “control” were included in the glossary. The definition should specifically exclude authority to deposit contributions in an account not controlled by the fundraiser. AFP recommends that the instructions also include examples of such arrangements.
- C. Part II, Col. (a-b), Page 4 (Fundraising Events):** This part relates to fundraising events. AFP notes that Schedule G itself and the corresponding instructions are inconsistent in terminology; the Form requires an organization to insert the “event name” in columns (a) and (b), whereas the instructions ask for the “event type” to be provided in those spaces. The discrepancy should be clarified and some examples should be given of what is required here. AFP believes the Service made a mistake here and meant to instruct filers to list the event name as is evident from looking at the Form, but apparently contradicted by the instructions.

XIII. Specific Comments on Schedule J: Supplemental Compensation Information

- A. Part I, General Comment (Questions Regarding Compensation):** The instructions indicate that for purposes of the questions regarding compensation, the term “listed person” refers to persons listed in Part VII, Section A of the Form 990. It would be helpful to have this term appear in quotations or some other distinct manner throughout the instructions to Schedule J. In addition, the definition of “former officer, director, trustee or key employee” is included in the instructions for Part VII but not repeated in Schedule J, although the term is used throughout the instructions. AFP suggests including this as a defined term in the glossary for easy reference.
- B. Part II, General Comment (Compensation of Officers, Directors, etc.):** There is a discrepancy between the requirements on Section A of Part VII of the Core Form, which requires reporting the organization’s five highest compensated employees who received more than \$100,000 and Part II of Schedule J, which requires reporting on those who received more than \$150,000. If there is a purpose for this discrepancy, the Service should explain so in the instructions. Otherwise, AFP suggest requiring the reporting to be consistent throughout the Form and Schedules so that the information provided is comparable.
- C. Part I, Lines 5-6, Page 7 (Contingent Compensation):** This question concerning whether any compensation to former or current directors, officers and key employees was determined in whole or *in part* by the gross revenues or net earnings of the organization may be extremely difficult to answer. Many organizations award bonuses to executive employees based on numerous factors, one of which may be the relative financial success of the organization. Nevertheless, bonus practices vary from organization to organization—most include revenue generation, net earnings and other non-financial variables. Indeed, these deliberations are often made by the board in

executive session, and although the decisions are based on established criteria, the formal determination is not in all cases clearly attributable to any one factor. AFP strongly recommends that the question be modified to replace “in whole or in part” with “directly” to reflect only those situations in which compensation is tied directly to gross revenue or net earnings. AFP commends the Service on adding examples to the instructions which are very helpful.

- D. Part II, Page 8 (Compensation of Officers, Directors, etc.):** This chart requires organizations to list compensation of officers, directors, etc., for the tax year. In the first bullet point, should the organization not report on former key employees who were compensated between \$100,000-150,000? This point is unclear because of the basic discrepancy between the definition of “key employee,” which excludes any person whose reportable compensation from the organization or related organizations does not exceed \$150,000, and others.
- E. Part II, Column C, Page 10 (Deferred Compensation):** Column C requires organizations to report deferred compensation that is earned or accrued in one year and deferred to a future year, whether or not funded or vested, and would require the organization to report that amount again in the year it is actually paid. AFP recommends that filers only report such income for listed individuals in the year it is received.

XIV. Specific Comments on Schedule L: Transactions with Interested Persons

- A. Part I, Line 1, Page 2 (Excess Benefit Transactions):** The instructions require filers to identify the disqualified person(s) and manager(s) in relation to excess benefit transactions. The table provided in Line 1 in Schedule L itself does not provide much room to describe the required information. AFP suggests revising the instructions to state that filers may use Schedule O if additional space is needed, or, alternatively, the Service should provide continuation sheets for Schedule L.
- B. Part I, Line 1, Page 3 (Excess Benefit Transactions):** The instructions provide some information about excess benefit transactions, but the Service should strongly advise filers to consult Appendix G for additional information on the topic. In addition, the highlights indicate that there is a warning to organizations regarding excess benefit transactions, but the paragraph on page 3 of the instruction (presumably the warning mentioned in the highlights) does not stand out. AFP suggests adding a heading in bold that states “Caution” at the start of this paragraph.
- C. Part I, Line 2, Page 3 (Section 4958 Taxes):** This line asks organizations to enter the amount of taxes imposed (whether or not assessed) under Section 4958 on the organization’s managers and/or disqualified persons. If a tax is not assessed, how can the organization report it? Also, does the Service expect organizations to report excise taxes and/or correction payments here? These are important points that should be explained in the instructions.

- D. Part II, General Comment, Page 3 (Loans to and from Interested Persons):** Certain commentators have urged the Service to include unpaid pledges in Part II or Part IV. AFP strongly disagrees with this position. Pledges are only enforceable under certain specific circumstances. Reporting these pledges in Schedule L as a transaction with interested persons may have potential negative connotations and, therefore, may dissuade directors, officers, etc. from making pledges that could potentially be reported in Schedule L.
- E. Part II, General Comment, Page 3 (Loans to and from Interested Persons):** This part requires organizations to list information about loans to and from interested persons. AFP is concerned that information disclosed on this chart could be construed negatively if additional explanations are not provided by the organization. AFP suggests that for all Columns (a-g) the organization be instructed to use Schedule O if additional space is needed or if the organization would like to offer additional explanations for these answers.
- F. Part II, Column (e), Page 4 (Loans in Default):** This column requests information about whether loans to or from interested persons are in default; however, the instructions ask organizations to answer based on whether the payment was past due or the debtor was in default. There is a difference between a payment being past due and a debtor being in default. AFP requests that the Service revise the instructions to ask organizations to answer “Yes” only if the debtor was in default or if any payment was past due more than 30 days as of the end of the organization’s tax year.
- G. Part III, Page 4 (Grants or Assistance Benefiting Interested Persons):** Grants or assistance to interested persons who are members of a charitable class served by the organization in which they are involved should be excepted from reporting in Part III of Schedule L.
- H. Part IV, Page 5 (Business Transactions Involving Interested Persons):** This section requires disclosure of business transactions involving interested persons. The instructions should be made clearer to state that an interested person’s involvement with a 501(c)(3) or (4) organization that transacts business with the filing organization is not to be reported in Part IV. Perhaps listing this direction as a “Tip” would be helpful.
- I. Part IV, Page 6 (Large Board Exception):** This part requires organizations to report on direct and indirect business transactions involving interested persons. It would be helpful to label the paragraph containing the large board exception with a heading in bold that states “Large Board Exception.”
- J. Part IV, Page 6 (Business Transactions Definition):** Under the definition of “business transactions,” requirements that board members contribute or acquire contributions of a certain amount should also not be considered business transactions in Part IV. The Service should make this clear in the instructions.

XV. Specific Comments on Schedule R: Related Organizations

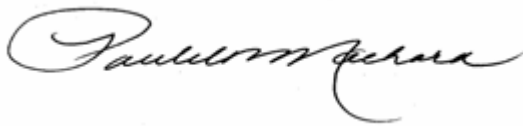
- A. General Comment (Unrelated Organizations):** The instructions (and glossary) do not clearly define the terms “unrelated organization” or “unrelated partnership” or specify that an unrelated organization or partnership is any type of organization that is not a “related organization” in the glossary, except in the small instructions in Part VI on the Form itself which states that unrelated is anything that is not related. AFP strongly suggests that the Service define the terms unrelated organization and partnership as those terms relate to Schedule R. This definition should be set out more clearly in the beginning of Schedule R itself, as well as the glossary. Furthermore, with regard to Schedule R as a whole, some of the information in this Schedule would not otherwise be publicly available, and in some cases, may constitute confidential financial information or even trade secrets. AFP believes that the Service should revisit the requirements of this Schedule to determine how it can prevent such unwarranted disclosures.
- B. Overview, Page 4 (Indirect Control):** The Service provides a definition of indirect control. AFP recommends that the Service explain the rules under Section 318 for constructive ownership and how they are different from the example provided in the first part of the paragraph.
- C. Part III, General Instructions, Page 5 (Identification of Related Organizations Taxable as a Partnership):** This part requires identification of related organizations taxable as a partnership. Further explanation and examples should be offered here.
- D. Part III, Column E, Page 6 (Predominant Income):** The instructions require filers to classify the types of partnership income. It would be helpful for the glossary to include a more detailed definition of “predominant income” and for the instructions to provide examples.
- E. Part V, General Instructions, Page 8 (Transactions with Related Organizations):** This section seems to encompass situations in which two organizations merge either into a new organization or into one of the existing organizations. If the Service intends that these types of activities be reported in Part V, AFP strongly suggests the instructions state this expressly and examples be provided in the instructions for Part V.
- F. Part VI, General Instruction, Page 9 (Unrelated Organizations Taxable as Partnerships):** The instructions concerning unrelated organizations taxable as a partnership include a very helpful example.

XVI. Conclusion

Once again, AFP thanks the Service for the opportunity to submit its comments and assist in this important process of restructuring the Form 990. The Form 990 serves as the primary source of data on exempt organizations for the Service and the public alike, and it is therefore critical that appropriate data be collected that will benefit the philanthropic community as a whole. AFP hopes that our comments provide the Service with additional insight on how the proposed instructions to the Form 990 and Schedules could positively and (perhaps inadvertently) negatively impact significant numbers of exempt organizations, particularly with respect to their fundraising efforts, and we remain available to offer any additional assistance that might be appropriate.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script, reading "Paulette V. Maehara". The signature is written in dark ink and is positioned above the typed name and contact information.

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AFP Code of Ethical Principles and Standards



ETHICAL PRINCIPLES • Adopted 1964; amended Sept. 2007

The Association of Fundraising Professionals (AFP) exists to foster the development and growth of fundraising professionals and the profession, to promote high ethical behavior in the fundraising profession and to preserve and enhance philanthropy and volunteerism. Members of AFP are motivated by an inner drive to improve the quality of life through the causes they serve. They serve the ideal of philanthropy, are committed to the preservation and enhancement of volunteerism; and hold stewardship of these concepts as the overriding direction of their professional life. They recognize their responsibility to ensure that needed resources are vigorously and ethically sought and that the intent of the donor is honestly fulfilled. To these ends, AFP members, both individual and business, embrace certain values that they strive to uphold in performing their responsibilities for generating philanthropic support. AFP business members strive to promote and protect the work and mission of their client organizations.

AFP members both individual and business aspire to:

- practice their profession with integrity, honesty, truthfulness and adherence to the absolute obligation to safeguard the public trust
- act according to the highest goals and visions of their organizations, professions, clients and consciences
- put philanthropic mission above personal gain;
- inspire others through their own sense of dedication and high purpose
- improve their professional knowledge and skills, so that their performance will better serve others
- demonstrate concern for the interests and well-being of individuals affected by their actions
- value the privacy, freedom of choice and interests of all those affected by their actions
- foster cultural diversity and pluralistic values and treat all people with dignity and respect
- affirm, through personal giving, a commitment to philanthropy and its role in society
- adhere to the spirit as well as the letter of all applicable laws and regulations
- advocate within their organizations adherence to all applicable laws and regulations
- avoid even the appearance of any criminal offense or professional misconduct
- bring credit to the fundraising profession by their public demeanor
- encourage colleagues to embrace and practice these ethical principles and standards
- be aware of the codes of ethics promulgated by other professional organizations that serve philanthropy

ETHICAL STANDARDS

Furthermore, while striving to act according to the above values, AFP members, both individual and business, agree to abide (and to ensure, to the best of their ability, that all members of their staff abide) by the AFP standards. Violation of the standards may subject the member to disciplinary sanctions, including expulsion, as provided in the AFP Ethics Enforcement Procedures.

MEMBER OBLIGATIONS

1. Members shall not engage in activities that harm the members' organizations, clients or profession.
2. Members shall not engage in activities that conflict with their fiduciary, ethical and legal obligations to their organizations, clients or profession.
3. Members shall effectively disclose all potential and actual conflicts of interest; such disclosure does not preclude or imply ethical impropriety.
4. Members shall not exploit any relationship with a donor, prospect, volunteer, client or employee for the benefit of the members or the members' organizations.
5. Members shall comply with all applicable local, state, provincial and federal civil and criminal laws.
6. Members recognize their individual boundaries of competence and are forthcoming and truthful about their professional experience and qualifications and will represent their achievements accurately and without exaggeration.
7. Members shall present and supply products and/or services honestly and without misrepresentation and will clearly identify the details of those products, such as availability of the products and/or services and other factors that may affect the suitability of the products and/or services for donors, clients or nonprofit organizations.
8. Members shall establish the nature and purpose of any contractual relationship at the outset and will be responsive and available to organizations and their employing organizations before, during and after any sale of materials and/or services. Members will comply with all fair and reasonable obligations created by the contract.

9. Members shall refrain from knowingly infringing the intellectual property rights of other parties at all times. Members shall address and rectify any inadvertent infringement that may occur.
10. Members shall protect the confidentiality of all privileged information relating to the provider/client relationships.
11. Members shall refrain from any activity designed to disparage competitors untruthfully.

SOLICITATION AND USE OF PHILANTHROPIC FUNDS

12. Members shall take care to ensure that all solicitation and communication materials are accurate and correctly reflect their organizations' mission and use of solicited funds.
13. Members shall take care to ensure that donors receive informed, accurate and ethical advice about the value and tax implications of contributions.
14. Members shall take care to ensure that contributions are used in accordance with donors' intentions.
15. Members shall take care to ensure proper stewardship of all revenue sources, including timely reports on the use and management of such funds.
16. Members shall obtain explicit consent by donors before altering the conditions of financial transactions.

PRESENTATION OF INFORMATION

17. Members shall not disclose privileged or confidential information to unauthorized parties.
18. Members shall adhere to the principle that all donor and prospect information created by, or on behalf of, an organization or a client is the property of that organization or client and shall not be transferred or utilized except on behalf of that organization or client.
19. Members shall give donors and clients the opportunity to have their names removed from lists that are sold to, rented to or exchanged with other organizations.
20. Members shall, when stating fundraising results, use accurate and consistent accounting methods that conform to the appropriate guidelines adopted by the American Institute of Certified Public Accountants (AICPA)* for the type of organization involved. (* In countries outside of the United States, comparable authority should be utilized.)

COMPENSATION AND CONTRACTS

21. Members shall not accept compensation or enter into a contract that is based on a percentage of contributions; nor shall members accept finder's fees or contingent fees. Business members must refrain from receiving compensation from third parties derived from products or services for a client without disclosing that third-party compensation to the client (for example, volume rebates from vendors to business members).
22. Members may accept performance-based compensation, such as bonuses, provided such bonuses are in accord with prevailing practices within the members' own organizations and are not based on a percentage of contributions.
23. Members shall neither offer nor accept payments or special considerations for the purpose of influencing the selection of products or services.
24. Members shall not pay finder's fees, commissions or percentage compensation based on contributions, and shall take care to discourage their organizations from making such payments.
25. Any member receiving funds on behalf of a donor or client must meet the legal requirements for the disbursement of those funds. Any interest or income earned on the funds should be fully disclosed.

A Donor Bill of Rights

PHILANTHROPY is based on voluntary action for the common good. It is a tradition of giving and sharing that is primary to the quality of life. To assure that philanthropy merits the respect and trust of the general public, and that donors and prospective donors can have full confidence in the not-for-profit organizations and causes they are asked to support, we declare that all donors have these rights:

I.

To be informed of the organization's mission, of the way the organization intends to use donated resources, and of its capacity to use donations effectively for their intended purposes.

II.

To be informed of the identity of those serving on the organization's governing board, and to expect the board to exercise prudent judgement in its stewardship responsibilities.

III.

To have access to the organization's most recent financial statements.

IV.

To be assured their gifts will be used for the purposes for which they were given.

V.

To receive appropriate acknowledgement and recognition.

VI.

To be assured that information about their donations is handled with respect and with confidentiality to the extent provided by law.

VII.

To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature.

VIII.

To be informed whether those seeking donations are volunteers, employees of the organization or hired solicitors.

IX.

To have the opportunity for their names to be deleted from mailing lists that an organization may intend to share.

X.

To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.

DEVELOPED BY

Association of Fundraising Professionals (AFP)
Association for Healthcare Philanthropy (AHP)
Council for Advancement and Support of Education (CASE)
Giving Institute: Leading Consultants to Non-Profits

ENDORSED BY

(in formation)
Independent Sector
National Catholic Development Conference (NCDC)
National Committee on Planned Giving (NCPG)
Council for Resource Development (CRD)
United Way of America

From: [KELLY A BROWN](#)
To: [*TE/GE-EO-F990-Revision;](#)
Subject: Comments on Draft Instructions of 2008 Form 990
Date: Saturday, May 31, 2008 5:06:04 PM

I respectfully submit the following comments on the Form 990 Draft Instructions. My comments pertain to the reporting of income or loss from joint ventures and Schedule H. Due to time constraints and the depth of the revisions to the Form 990, we were not able to complete our analysis of the remainder of the Form 990 Draft Instructions in time to provide comments thereon.

1. Please clarify the proper reporting of the organization's share (whether or not distributed) of income or loss of a joint venture in Part VIII and/or Part IX of the Core Form. The instructions should clearly state whether gross income and expenses of the joint venture should be reported separately in Parts VIII and IX, respectively, or that the net income or net loss should be reported. And if reported net, the instructions should indicate whether net losses are reported in Part VIII or Part IX of the Core Form. Furthermore, the instructions should indicate whether amounts to be reported on Form 990 (gross or net) should be obtained from the Schedule K-1 or the financial statements of the joint venture or based on what has been recorded in the GAAP financial statements of the organization.
2. If net income or loss from a joint venture is reported in Part VIII and thus, expenses of the joint venture are not reported in Part IX, then the instructions for reporting Total Expense that is entered on the various Schedule H Worksheets for computing the % of net community benefit to total expense on Schedule H should indicate that the organization's share of joint venture expenses should be included in Total Expense. Furthermore, the instructions should clarify whether all joint ventures should be considered when computing Total Expense, or just those joint ventures that operate one or more hospitals.
3. Will the Form 1065, Schedule K-1 be changed to include all of the information needed by the organization in order to properly file Schedule H? The IRS instructions that address joint ventures should include guidance regarding what an organization should do if it cannot obtain the necessary information from the joint venture in order to properly complete any portion of the Form 990 and related Schedules and Worksheets.
4. Item 3, bullet 1 of the Highlights section of the Schedule H instructions states that the organization is to include its proportionate share of joint venture items required to be reported as

community benefit costs reported in Part I, community building costs reported in Part II, and bad debt and Medicare costs reported in Part III. The instructions need to clearly indicate whether joint ventures are to be considered when answering the various questions on Schedule H, Lines 1-6 of Part I and Line 9 of Part III.

5. Item 3, bullet 1 of the Highlights section of the Schedule H instructions states that the organization is to include its proportionate share of joint venture items required to be reported as Medicare costs reported in Part III. A free-standing ambulatory surgery center is not required to file a Medicare Cost Report. Thus, the expenses associated with a joint-ventured ambulatory surgery center's Medicare revenues will not be reflected in the Medicare allowable costs reflected on the organization's Medicare Cost Report. The format of Worksheet B should be revised to include these costs (or Medicare revenues attributable to joint ventures should be excluded from this section).

6. The instructions need to clarify how Schedule H, Part I, Line 3b should be completed if an organization's charity care policy provides for discounted care to ALL uninsured patients and the amount of the discount depends on the family income as a % of the Federal Poverty Guidelines ("FPG"). The form requires the organization to check a box and indicate the family income limit as a % of the FPG that is eligible for discounted care. Under the scenario described, there is no limit.

7. The Schedule H, Part IV instructions are clear that the % ownership is measured as of the close of the taxable year of the organization. However, the instructions do not define "current" as used in item (1) in determining whether there is a reportable entity. The instructions need to clarify if "current" means as of the close of the taxable year, at any time during the taxable year, as of the filing date of the return, or some other period of time.

The Schedule H, Part IV instructions need to clarify whether indirect ownership should be considered in determining if the "more than 10%" threshold is met and whether indirect ownership should be included in the ownership % entered in columns (c), (d) and (e).

8. The request on Schedule H, Part III, Section B, Line 8 to indicate the costing method used to determine the cost of Medicare costs reported on line 6 implies that a methodology other than the allowable costs per the Medicare Cost Report is acceptable. The instructions should clarify whether use of the allowable costs per the Medicare Cost Report is required.

9. The reporting of the cost of subsidized health services on Schedule H, Part I, Line 7g should be optional. The computation of the

net cost of subsidized health services is extremely complicated. There is a high probability of inadvertently double counting costs in this category. Furthermore, our current systems can not provide bad debt expense by clinical service line. The resources necessary to accurately compute this line item may not justify the benefit obtained from the data. Organizations should be given the choice of whether to commit resources to capture this data. The reporting of the cost of subsidized health services should be optional.

10. The IRS requested feedback regarding the Facility Information required by Part V. As a multi-hospital organization that operates numerous off-campus outpatient services, the information that we will be required to report will be quite lengthy. However, we would not consider the request to be overly burdensome given that this information is readily available.

The instructions for Part V need to clearly state whether all locations operated by joint ventures that are partially owned by the hospital are required to be listed in Part V, or only those joint ventures that operate one or more licensed hospitals (for which community benefits would be reported in Schedule H) or that are reported in Part IV of Schedule H.

Thank you for the opportunity to provide these comments.

From: [schibner](#)
To: [*TE/GE-EO-F990-Revision;](#)
Subject: 990 Draft Instructions-Nondeductible Contributions
Date: Saturday, May 31, 2008 6:04:11 PM

Nondeductible Contributions

990 Draft Instructions - Core Part V, Line 6a, 6b
Core Part VIII, Line 1 and Line 2

Parts of this comment on nondeductible contributions appear in a previously submitted comment that was specific to Part VIII, Lines 1 and 2.

Nondeductible contributions are also the subject of questions in Part V on Lines 6a and 6b.

Therefore, it is important for the Instructions to take into account the reporting problem encountered by clubs, trade associations and other organizations that have "members" in the ordinary sense of the word, and which occasionally solicit voluntary nondeductible contributions from those members, and also from the "public" (i.e., non-members). This is not a problem of maintaining adequate accounting records, but of tax reporting.

It is not at all unusual for recreational sports clubs to receive nondeductible voluntary contributions, cash and non-cash, from both members and non-members, in support of the particular sport for which the club was organized. Presumably trade associations, chambers of commerce, etc, also receive similar voluntary nondeductible gifts from both members and non-members.

Does the IRS care how these nondeductible contributions are reported? Should nondeductible contributions be broken out by the source?

The Instructions indicate that contributions from the public (i.e., non-members in this context) are reported in Part VIII, Line 1, but there seems to be a presumption in the Instructions that this is tax-deductible revenue. What do you do if it is nondeductible?

Ordinary revenue from members (dues and program service fees) is reported in Part VIII on line 2, but it is not clear what to do with nondeductible contributions from members. Is it considered to be "program service revenue" if it is related somehow to a particular "activity", even though it is a voluntary contribution?

Guidance on this reporting problem would be most appreciated as tax preparers are all over the map in how to report this for clubs -- sometimes reporting it as Contributions and sometimes treating it as nothing more than a form of program service revenue.

[Note: By now, I have convinced myself that nondeductible contributions are program service revenue. However, it would most helpful if the Instructions for Part VIII included a sentence or two about how to report them correctly.]

Thank you.
S.C. Hibner.